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Annual Report 1993 - 94

Saskatchewan Labour Relations Board

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Annual Report 1993 - 94

Saskatchewan Labour Relations Board

for the fiscal year ending March 31, 1994

Published by Authority of
The Honourable Ned Shillington
Minister of Labour

Letters of Transmittal

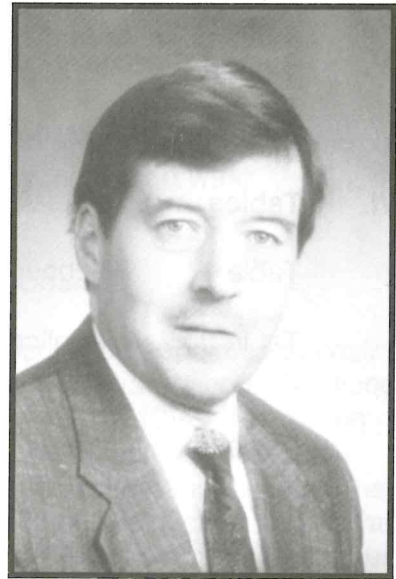
The Honourable John Wiebe
Lieutenant Governor
Province of Saskatchewan

May it Please Your Honour:

I respectfully submit the Annual Report
of the Saskatchewan Labour Relations Board
for the fiscal year ending March 31, 1994.



Hon. Ned Shillington
Minister of Labour



Hon. Ned Shillington
Minister of Labour
Province of Saskatchewan

Dear Sir:

It is my pleasure to provide you with
the Annual Report of the Saskatchewan Labour
Relations Board. It covers the period
commencing April 1, 1993 and ending March 31, 1994.

Sincerely,



Beth Bilson
Chair
Labour Relations Board



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I. Labour Relations Board

The Labour Relations Board came into existence in 1944 with passage of *The Trade Union Act*, S.S. 1944 (2nd Sess.) c. 69. Although the Act was amended in subsequent years, the basic concept of the board has not changed. Then, as now, the board is an independent, quasi-judicial tribunal charged with the responsibility of adjudicating disputes that arise under *The Trade Union Act*. It does this principally through public hearings and its written decisions. The board's decisions are final and binding upon the parties. There is no appeal, and review by the courts is strictly limited.

The Act presently provides for a board composed of five members, and an unspecified number of alternate members. All members and alternate members of the board are appointed by the Lieutenant Governor in Council. The chair and vice-chair are full-time members of the board. The remaining members and alternate members are not full-time employees of the board. They are appointed and paid on a per diem basis when their services are required. The board is a representational board. This means all members of the board, with the exception of the chair, are representatives of employees or employers. The chair is neutral and, with only one exception, has always been a lawyer.

The board reports to the Minister of Labour for the Province of Saskatchewan. The Minister is obligated by *The Trade Union Act* to provide the board with the requisite staff and facilities. Otherwise, the board operates independently from the government, its departments and agencies.

The board's offices and staff are located in Regina, although the board maintains a hearing room in Saskatoon. The staff of the board is composed of the executive officer (the duties of which have been assumed by the vice-chair), the board secretary and three clerical positions. An Organizational Chart of the Labour Relations Board is contained in Table I.

The composition of the board during the year covered by this report was:

Beth Bilson - Chair

Beth Bilson was appointed to chair the Saskatchewan Labour Relations Board in July of 1992. Ms. Bilson has undergraduate and graduate degrees in history and law from the University of Saskatchewan and the University of London, and has been a member of the faculty of the College of Law at the University of Saskatchewan since 1979. While at the University of Saskatchewan, she served as senior grievance officer of the University of Saskatchewan Faculty Association, and as assistant vice-president (Administration), a position which included responsibility for faculty industrial relations and campus health and safety. She has taught and written in the field of labour law, and has served as chair on a number of arbitration boards. Ms. Bilson resides in Regina.

John R. B. Hobbs - Vice-Chair

John Hobbs graduated from the College of Law, University of Saskatchewan, in 1975. Following graduation, Mr. Hobbs practised law in Regina until joining the board in 1985 as vice-chair. He is the board's first legally trained vice-chair. He also fills the role of executive officer. Mr. Hobbs resides in Regina.

Bruce McDonald

Bruce McDonald was appointed to the board as an alternate member in 1974 and as a member in 1977. Mr. McDonald is the business agent for the International Brotherhood of Painters and Allied Trades, Local Union 1996. He is a past president of the Canadian Federation of Labour. Mr. McDonald resides in Saskatoon.

John Forsyth

John Forsyth was appointed to the board in 1975 as an employer representative. Although Mr. Forsyth is now retired, he was formerly the manager of Sherwood Co-operative Association Ltd. Mr. Forsyth resides in Regina.

Jill Jones

Jill Jones was appointed to the board as an alternate member representing employees in 1984. Mrs. Jones is a former president of the Saskatchewan Union of Nurses. Mrs. Jones resides in Regina.

Jim Tomlinson

Jim Tomlinson was appointed to the board as an alternate member representing employers in 1986. Mr. Tomlinson is a former general manager of Graham Construction Ltd. Mr. Tomlinson resides in Moose Jaw.

John MacLeod

John MacLeod was first appointed to the board in 1979 as an alternate member representing employees. Mr. MacLeod was recently re-appointed in the same capacity. Mr. MacLeod is the business agent for the International Brotherhood of Electrical Workers. He resides in Regina.

Diane Pitchford

Diane Pitchford was appointed to the board in March 1992 as an alternate member representing employees. Ms. Pitchford is vice-president of Local 2, Communication and Electrical Workers of Canada. She resides in Saskatoon.

Carolyn Jones

Carolyn Jones was appointed to the board in March 1992. Ms. Jones is a staff representative with United Food and Commercial Workers Local 1400 and has been since 1981. She served for four years as vice-president of the Saskatchewan Federation of Labour and has been active on several of its committees and in the labour movement generally. Ms. Jones resides in Saskatoon.

Kathleen Joyner

Kathleen Joyner was appointed to the board in 1990 as an alternate member representing employers. Mrs. Joyner is the president of a retail corporation and manages several clothing stores. She resides in Moose Jaw.

Elaine Bambury

Elaine Bambury was appointed to the board in 1990 as an alternate member representing employers. Mrs. Bambury is employed as an administrator at the Wolseley Union Hospital. She resides in Wolseley.

Ken Hutchinson

Ken Hutchinson was appointed to the board in March 1992 as an alternate member representing employers. Mr. Hutchinson previously served on the board from 1977 to 1986 in the same capacity. Mr. Hutchinson was the administrator of personnel services at the Regina General Hospital until he retired and was also a director of industrial relations for the Saskatchewan Hospital Association. He resides in Regina.

David Maki

David Maki was appointed to the board in March, 1992 as an alternate member representing employees. Mr. Maki is a business representative for the Office and Professional Employees International Union. He resides in Regina.

Gloria Cymbalisty

Gloria Cymbalisty was appointed to the board in March 1992 as an alternate member representing employees. Ms. Cymbalisty is self-employed in an industrial relations consulting firm. She was formerly a representative for the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union. She resides in Regina.

Tom Davies

Tom Davies was appointed to the board in March 1994 as an alternate member representing employers. Mr. Davies is the industrial relations manager for I.M.C. Canada and resides in Esterhazy.

Gerry Caudle

Gerry Caudle was appointed to the board in March 1994 as an alternate member representing employees. Mr. Caudle had previously served in the same capacity during the 1980s. Mr. Caudle is a representative with the Canadian Union of Public Employees and resides in Saskatoon.

Bob Cunningham

Bob Cunningham was appointed to the board in March 1994 as an alternate member representing employers. Mr. Cunningham is the executive director of the Saskatchewan Mining Association and resides in Regina.

Elmer Schwartz

Elmer Schwartz was appointed to the board in March 1994 as an alternate member representing employers. He is a special advisor to the Saskatchewan Association of Health Organizations and resides in Saskatoon.

II. The Trade Union Act

In Canada, legislative jurisdiction over industrial relations has, since a ruling of the Supreme Court of Canada in 1925, fallen largely under provincial jurisdiction. Fortunately the potential this presented for legal fragmentation was offset by varying combinations of interprovincial management and union structures, common history and common day-to-day economic and political conditions. The result is a remarkable commonality of core principles and procedures in all 11 Canadian jurisdictions.

The main features of Saskatchewan's *Trade Union Act*, like its counterparts in all other Canadian jurisdictions, may be summarized as follows:

- traditional courts are replaced by a specialized, quasi-judicial tribunal with exclusive and binding jurisdiction over the matters assigned to it by *The Trade Union Act*;
- common law of conspiracy and restraint of trade is abolished insofar as it applies to employees who bargain collectively;
- the majority of employees determine for all employees in a group whether they will bargain collectively and, if so, through which union;
- an employer is required to recognize the union chosen by the majority of its employees as their exclusive representative for the purpose of bargaining collectively;
- the employer and the union are required to bargain in good faith with a view to concluding a collective bargaining agreement;
- a number of unfair labour practices are created to protect employees and unions from any attempt by the employer to interfere with their rights;
- strike and lock-out activity is regulated, but not prohibited;
- specific issues, such as union security, technological change, conciliation, voting procedures and religious exclusions are addressed; and
- remedial and enforcement procedures are included in the statute.

In short, the Act provides the legal framework for collective bargaining, along with a procedure for adjudicating disputes and enforcing rights and obligations. *The Trade Union Act*, like its counterparts in all other Canadian jurisdictions, does not attempt to prohibit economic conflict between employees and employers, but only to control it. It does not attempt to regulate the outcome of collective bargaining, but merely the process to be followed. The function of the Labour Relations Board within this statutory framework is to identify the parties which will participate in collective bargaining, and to monitor the procedural aspects of the bargaining process.

Under *The Trade Union Act* the board is not required to follow all of the formal rules of procedure which have been developed in courts of law. The board attempts to conduct its hearings in a way which will make them accessible to representatives of the parties who have no legal training, and which will allow the board to identify the issues which are genuinely in dispute.

III. The Construction Industry Labour Relations Act, 1992

Passed in 1992, *The Construction Industry Labour Relations Act 1992*, S.S. 1992, c. C-29.11, provides for a system of collective bargaining in the building trades between organizations representing groups of contractors and the construction unions. The supervision of this statutory system is conferred on the board under the Act. During this reporting period, the board has decided four applications under this statute. The most significant of these applications was an application for an injunction by an employers' organization which was attempting to displace the representative employers' organization designated by the Minister. The injunction would have prohibited the designated employers' organization from continuing to bargain collectively or entering into a collective agreement with the trade unions. The board refused to grant the injunction upon the grounds that the activities of the designated employers' representative were completely lawful and would not cause any unlawful harm to the applicant.

IV. Budget Summary

The total budget of the Saskatchewan Labour Relations Board for the fiscal year ending March 31, 1994 was \$442,000. The actual sum expended by the board during the fiscal year was \$420,000.

The board has, over time, displayed an ability to manage its resources efficiently. It should be noted, however, that it is unable to control or predict the nature or number of applications put before it, and as a result, the relationship of expenditure to budgetary allocation cannot be guaranteed.

V. Summary of Board Activity for 1993-94

Between April 1, 1993, and March 31, 1994, the Labour Relations Board held 12 monthly meetings lasting a total of 132 days.

A total of 256 applications were received by the board during the year. Tables 2 and 3 show these applications by type of application and disposition. The five-year trend is shown by disposition in Tables 4 and 5 and by type in Tables 6 and 7.

During 1993-94, 83 certification orders covering 1,888 employees were issued by the board and 11 certification orders affecting 197 employees were rescinded.

It is impossible to convey a complete picture of the nature and range of applications brought before the board during the year. It may be helpful, however, to mention briefly some of the issues which are illustrative of the many types of questions which arise from applications before the board.

The tug of war between the board and the Court of Queen's Bench over the scope of the board's remedial jurisdiction continued through this reporting period. The board has continued to order employers to compensate employees who have lost wages due to a violation of the Act, whereas the Court of Queen's Bench has continued to take the view that the board's jurisdiction is limited to granting monetary

loss to employees who have been discharged contrary to the Act. The issue was argued before the Court of Appeal in December 1992, and a decision is still pending (see: Town of Watrous, LRB File No. 128-93; Metis Addictions Council of Saskatchewan Inc., LRB File Nos. 196-93 to 198-93 and 224-93; WaterGroup Canada Ltd., (1993) 4th Quarter, Sask. Labour Report, p. 42 (Sask. Q.B.).

In several decisions issued during this reporting period, the board was called upon to examine not only the nature of a union's duty of representation, but also the board's remedial jurisdiction when that duty has been breached. In Mary Banga, LRB File Nos. 173-93, 269-93 and 014-94, the board ordered the union to pay the costs of a private lawyer to represent the employee when the board found that the union had not and now could not provide proper representation (see also: Laurence Berry, LRB File No. 134-93).

Two acrimonious rescission applications decided during this reporting period gave the board an opportunity to take a look at the concept of employer interference in a way that had not been done before. In WaterGroup Canada Ltd., LRB File No. 033-93, and F. W. Woolworth Co. Ltd., LRB File No. 148-93, the board dismissed the rescission applications and refused to direct a vote where it found that the employer had created a climate of hostility and opposition to the presence of the union which discouraged the employees from supporting the union and pursuing their right to bargain collectively.

In St. Paul's Hospital, LRB File No. 292-91, the board refused an invitation by the Health Sciences Association to recognize standard bargaining units at acute care hospitals. The board also refused to remove technical employees from the

general service unit and create a separate unit for them.

For many years, it was widely believed that the board lacked the jurisdiction to reconsider one of its own decisions. However, in two decisions rendered during this reporting period (Westfair Foods Ltd., LRB File No. 096-92 and Remai Investment Corporation, LRB File No. 132-93), the board examined this issue in detail and came to the conclusion that it enjoyed extensive jurisdiction to reconsider its own decision but added that it was a jurisdiction that had to be used with great caution.

Finally, the board was involved in adjudicating a variety of issues in a number of labour disputes which received a good deal of public exposure (Regina Police Association v. The Regina Board of Police Commissioners; R.W.D.S.U. v. Westfair Foods Ltd.; R.W.D.S.U. v. WaterGroup Canada Limited; U.F.C.W. v. F. W. Woolworth Co. Ltd.)

VI. Tables

Table 1

**Labour Relations Board
Organizational Chart
March 31, 1994**

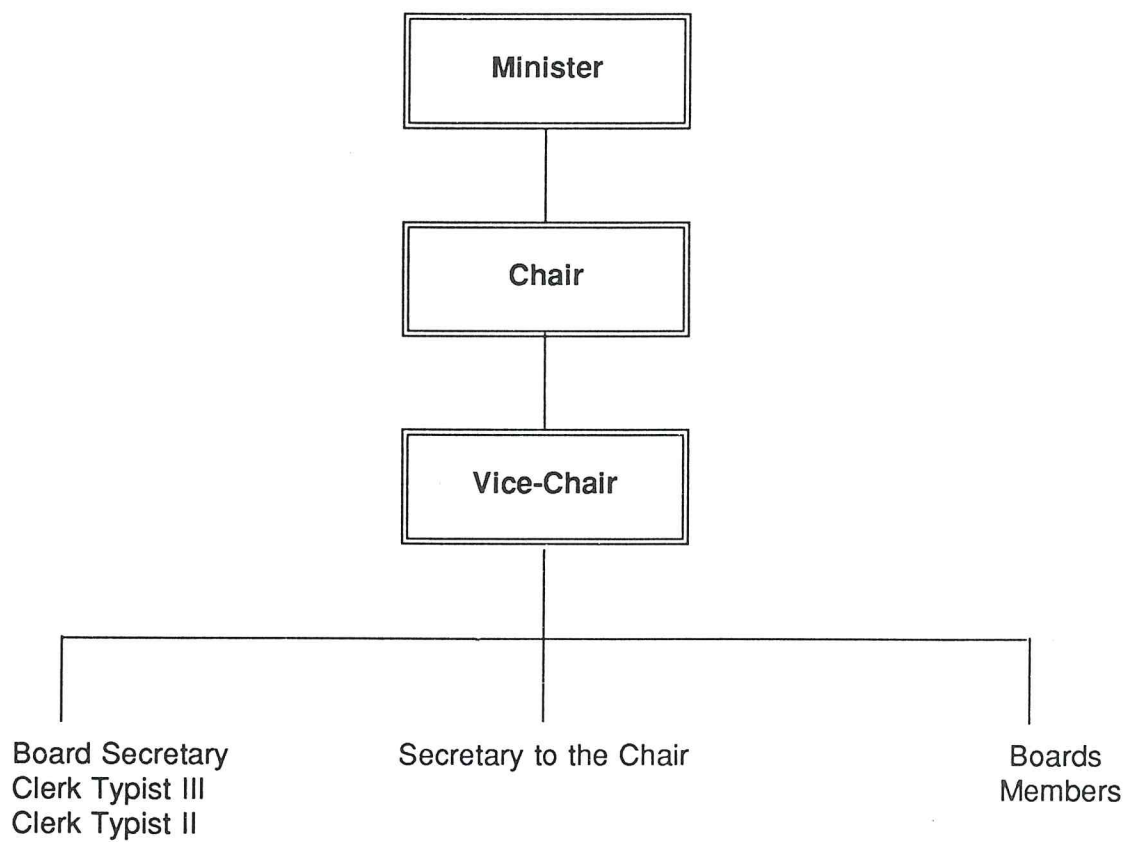


Table 2

**Applications under *The Trade Union Act*
by Type of Application and Disposition, 1993-94**

Type of application and disposition	Applications	Type of application and disposition	Applications
Total Applications	286	Exclusion on religious grounds	
Granted	186	(Section 5, clause l)	1
Dismissed	36	Granted	1
Withdrawn	60	Dismissed	--
Determined	4	Withdrawn	--
Conducted	0		
Certification		Employee determination	
(Section 5,		(Section 5, clause m)	--
clauses a, b and c)	85		
Granted	83	Strike Votes	
Dismissed	1	(Section 11(8))	--
Withdrawn	1		
Unfair Labour Practice		Reference of Dispute	
(Section 5, clause d)	66	(Section 24)	6
Granted	22	Determined	4
Dismissed	13	Withdrawn	2
Withdrawn	31		
Reinstatement		Duty of fair representation	
(Section 5, clause f)	19	(Section 25.1)	8
Granted	6	Granted	3
Dismissed	4	Dismissed	5
Withdrawn	9	Withdrawn	--
Monetary Loss		Transfer of Obligation	
(Section 5, clause g)	19	(Section 37)	--
Granted	6		
Dismissed	4	Technological Change	
Withdrawn	9	(Section 43)	--
Company Dominated		Ratification Votes	
(Section 5, clause h)	1	(Section 45)	1
Granted	--	Granted	--
Dismissed	--	Dismissed	--
Withdrawn	1	Withdrawn	1
Amendment or Rescission			
(Section 5, clauses i, j and k)	75		
Granted	64		
Dismissed	6		
Withdrawn	5		

*286 applications were disposed of although 253 applications were received.

Source: Saskatchewan Labour Relations Board files.

Table 3

Applications under *The Construction Industry Labour Relations Act, 1992*
by Type of Application and Disposition, 1993-94*

Type of application and disposition	Applications	Type of application and disposition	Applications
Total Applications	3	Section 5	
Granted	--	Granted	--
Dismissed	2	Dismissed	1
Withdrawn	--	Withdrawn	--
Determined	1		
Section 29		Section 37	
Granted	--	Granted	--
Dismissed	1	Dismissed	--
Withdrawn	--	Withdrawn	--
		Determined	1

* *The Construction Industry Labour Relations Act, 1992* was proclaimed in 1992. Therefore these statistics are the beginning of the applications under this Statute.

Table 4

**Applications to the Labour Relations Board
under *The Trade Union Act*, by Disposition,
1989-90 to 1993-94**

Year	Total Applications	Granted	Dismissed	Withdrawn	Determined*	Votes Conducted (Sec. 45)
1989-90	261	146	54	58	2	1
1990-91	234	156	41	35	2	-
1991-92	318	198	45	73	2	-
1992-93	245	158	41	46	2	-
1993-94	286	186	36	60	4	-

* Under *The Trade Union Act*, the board may determine the outcome of any dispute referred to it by either party. The decision of the board is final and binding.
Source: Saskatchewan Labour Relations Board files.

Table 5

**Applications to the Labour Relations Board
under *The Construction Industry Labour Relations Act, 1992*,
by Disposition, 1993-94 ***

Year	Total Applications	Granted	Dismissed	Withdrawn	Determined
1993-94	3	--	2	--	1

* *The Construction Industry Labour Relations Act* was proclaimed in 1992. Therefore, statistics are only available commencing in the 1993-94 fiscal year.

Table 6

**Applications under *The Trade Union Act*
by Type of Application, 1989-90 to 1993-94**

Type of Application	1989-90	1990-91	1991-92	1992-93	1993-94
Total applications	261*	234*	318*	245*	286*
Certification (Section 5, clauses a, b and c)	105	90	158	114	85
Unfair labour practices (Section 5, clause d)	60	46	64	62	66
Reinstatement (Section 5, clause f)	18	10	19	17	19
Monetary loss (Section 5, clause g)	18	11	23	18	19
Company dominated (Section 5, clause h)	--	--	3	--	1
Amendment or Rescission (Section 5, clauses i, j and k)	41	55	43	28	75
Exclusion on religious grounds (Section 5, clause l)	13	7	3	2	1
Employee determination (Section 5, clause m)	--	--	--	--	--
Strike Votes (Section 11[8])	--	--	--	--	--
Reference of Dispute (Section 24)	2	1	3	2	6
Duty of Fair Representation (Section 25.1)	--	--	--	3	8
Transfer of Obligation (Section 37)	2	1	--	--	--
Technological Change (Section 43)	--	--	2	--	--
Ratification Votes (Section 45)	2	--	--	1	1

*This figures represents the number of applications disposed of not the number received.
Source: Saskatchewan Labour Relations Board files.

Table 7

Applications under *The Construction Industry Labour Relations Act, 1992*
by Type of Application, 1993-94 *

Type of Application	1993-94
<hr/>	
Total applications	3
Section 5	1
Section 29	1
Section 37	1

* *The Construction Industry Labour Relations Act* was proclaimed in 1992. Therefore, statistics are only available commencing in the 1993-94 fiscal year.